

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
DECEMBER 04, 2018**

CALL TO ORDER A meeting of the Flathead County Board of Adjustment was called to order at
5:58 pm approximately 6:00 p.m. at the South Campus Building, 40 11th
Street West, Suite 200, Kalispell, Montana. Board members present were Cal
Dyck, Ole Netteberg, Gina Klempel, Roger Noble and Mark Hash. Mark
Mussman, Kari Nielsen, Rachel Ezell, and Erik Mack represented the Flathead
County Planning & Zoning Office.

There were 9 members of the public in attendance.

APPROVAL OF Noble motioned and Netteberg seconded to approve the October 2, 2018
MINUTES minutes as written. The motion passed unanimously by quorum.
5:58 pm

DISCLOSURE OF None
ANY BOARD
CONFLICT OF
INTEREST
5:58 pm

PUBLIC None
COMMENT
(Public matters that
are within the
jurisdiction of the
Board 2-3-103
M.C.A)
5:59 pm

JASON & KRISTY A request from Jason & Kristy Williams for a variance to Section 5.01.030(2) of
WILLIAMS the Flathead County Zoning Regulations (FCZR), "No accessory structures
(FZV-18-04) except fences or hedges shall be constructed in any front yard. Accessory
5:59 pm structures shall not be located any closer than five (5) feet to a rear or side lot
line. Signage shall be located on a lot in conformance to the requirements of
Chapter V." The applicant would like to place a garage in the front yard of the
property located at 2475 Mission Trail near Kalispell, MT within the Evergreen
Zoning District. The property is currently zoned R-2 (One-Family Limited
Residential) and contains 0.868 acres.

STAFF REPORTS
5:59 pm

Mack reviewed the Staff Report FZV-18-04 for the board.

**BOARD
QUESTIONS**
6:02 pm

None

**APPLICANT
PRESENTATION**
6:02 pm

Jason Williams, 2475 Mission Trail, was the applicant and presented a written response to staff report supporting the variance. He pointed out that it was an after the fact variance request because he had admittedly made a mistake with his interpretations of the zoning regulations. He did not know he was out of compliance until he heard from the code compliance officer. He was unaware that he could not build an accessory dwelling in the front yard. He stated that had he known the regulations, he believed he would have still been in front of the board asking for a variance because he felt there wasn't a logical place to put the building. He reviewed the report he submitted and identified what he felt were "errors of facts". He felt the topography created a hardship. He also felt it was peculiar because of where the placement of the home was on the property. He also challenged what negative impact the violation would bring on the neighbors. He said it would not have an impact with traffic or noise. He presented letters of support from his neighbors.

**BOARD
QUESTIONS**
6:11 pm

None

**PUBLIC
COMMENT**
6:12 pm

None

**STAFF
REBUTTAL**
6:12 pm

Mack clarified what findings #1 and #8 really stated; being that a 20' accessory would have been allowed but he had built a 30'. Hash also asked for clarification on finding #2. Mack said he didn't know where the photos the applicant presented were in relation to his property, therefore, he was unsure how to address that. Williams said they were all over Mission Trail. The board questioned the applicant on the specific dimensions of the structure. Hash asked for clarification on finding #4 and if there needed to be any changes based on what the applicant had shared. Mack said that if the photos provided were on the lot then it would be similar to other properties.

Netteberg said it was a good point that the house had been there prior to the

zoning. Had people known how it was going to be zoned, they wouldn't have built directly on the bluff.

Hash asked about finding #7. Mack said there was nothing untrue about the statement and that it was in a response to a complaint that turned into a violation.

Hash asked about finding #8. Mack referenced finding #1 and said it was the same. He then asked if there was anything else that needed to be addressed based on what the applicant had shared. Mack said that it was up to the board to decide if anything needed to be addressed from the written report. He said it was the board's decision on what facts were true. Mack felt the staff report was correct, nothing had changed after hearing the applicant rebuttal, and it was ultimately up to the board.

**BOARD
DISCUSSION**
6:19 pm

Klempel clarified that if he met 6 of the findings, it still wouldn't pass because it would have to meet every criteria. She felt that staff's report was correct.

Noble and Dyck asked for clarification on the distance from the structures to the property line. They discussed with staff the regulations for attached and detached structures and property lines. They also asked for definition of attached per the zoning regulations.

Noble asked if the applicant had conferred with anybody in the planning office before the structure was constructed. The applicant replied no. He knew that permits were not needed and it did not dawn on him that it would be an issue with zoning based on what he had seen in his neighborhood.

Noble asked Mack if there had been any letters of opposition received and Mack replied no.

Netteberg said that after the fact applications were always hard for the board. It impressed him that his neighbors were ok with it.

Hash agreed that after the fact applications were difficult and that he relied on the accuracy of the staff reports. He said that what the applicant had presented was also very good but the problem was that the board had to look at what was required to do and not what they felt they should do. He did not see how the applicant could come in to compliance.

**MOTION TO
ADOPT F.O.F
(FZV-18-04)
6:27 pm**

Netteberg made a motion to accept Staff Report FZV-18-04 as Findings-of-Fact with the owner's input.

**BOARD
DISCUSSION
6:27 pm**

Netteberg made the motion on the premise that the home was put there before zoning which left him no room for "anything".

Mack asked for clarification that they only wanted to change the facts that the applicant did not agree with. Netteberg confirmed that was correct.

Mussman suggested best protocol to use if they wanted to change each finding.

Hash suggested that Netteberg withdraw his motion, the board would discuss, and then he could motion again.

**MOTION
WITHDRAWN
6:30 pm**

Motion withdrawn by Netteberg.

**BOARD
DISCUSSION
6:30 pm**

Netteberg mentioned that he had gone to the site and had taken a picture and wondered if it was ok if they looked at it. Hash referred to the seminar that they had recently and discussed with staff the proper protocol when a board member visits a site. If a board member went to a site, they are to disclose what they had seen so that everybody could be on the same page. Mussman agreed that was correct. Netteberg said he frequently visited sites prior to meetings so he had an idea of what was going on. Mussman asked if he had visited with anybody on that site and Netteberg replied no. Hash reiterated that if a board member goes out to a site, they need to disclose that to everyone and refrain from talking to anybody. Hash said one would essentially be doing their own investigation. Netteberg felt that was what they should be doing. Hash clarified that whatever had been investigated just needed to be disclosed.

**MOTION TO
AMEND
F.O.F.
(FZV-18-04)
6:33 pm**

Netteberg motioned, seconded by Noble, to amend findings of fact to state the following:

1. Strict compliance with the regulations would ~~not~~ limit the reasonable use of property because *there is not adequate room on the east side to build a detached garage and the home is situated on a slope that would present challenges building anywhere else. the applicant would be able to construct the detached garage in accordance with the setbacks and outside the front*

yard without a variance and the property already contains a single family dwelling and a garage.

2. Strict compliance with the regulations would ~~not~~ deprive the applicant of rights enjoyed by other properties because ~~most other~~ properties in the vicinity do have accessory garage. ~~do not have accessory garages and the one that does is located on a corner with the garage accessed off a side street.~~
3. The alleged hardship appears to be the result of circumstances outside the applicants control because the house was built at the back of the lot prior to the establishment of the Evergreen Zoning District which prohibited accessory structures in the front yard.
4. The alleged hardship ~~does not appear to be~~ is peculiar to the subject property because *of the elevation impacts and due to the orientation of the house built prior to the Evergreen Zoning District on the property.* ~~the subject property is similar in size to the neighboring properties located along the bluff and all those properties have a single family dwelling and an attached garage.~~
5. The alleged hardship does not appear to have been created by the applicant because the house was built at the back of the lot prior to the establishment of the Evergreen Zoning District which prohibited accessory structures in the front yard.
6. *The hardship is not economic because of the existing development of the house and the fact that there is topography and unstable soils present no viable alternatives. Reasonable alternatives exist that would not require a variance from the regulations because the garage could be constructed on the east side of the house in compliance with the bulk and dimensional requirements.*
7. Granting of the variance request ~~could~~ *would not* have an adverse affect on the neighboring properties because *adjacent property owners are in support.* ~~this variance request is a result of zoning violation.~~
8. The variance requested does ~~not~~ appear to be the minimum variance which would alleviate the alleged hardship because *of the existing development, of the topography and bad dirt.* ~~there is an alternative that exist such as building the garage in line with the existing house on the east side and outside the side setback which would eliminate the need for the variance.~~
9. Granting of the variance ~~is likely to~~ *will not* confer a special privilege ~~that is denied to other properties in the district because~~ *of the physical constraints soils and topography that restrict building elsewhere on the property.* ~~most properties in the vicinity do not have accessory garages and the one that does is located on a corner with the garage accessed off a side street.~~

**BOARD
DISCUSSION
6:33 PM**

Netteberg made the motion to amend the findings. As a board, they discussed each item separately.

Netteberg stated that there was reasonable use there with no garage. He then discussed the location of the house and not being able to use 80% of the property.

Noble read FOF #1 from the applicant and then added to it.

Netteberg changed FOF #2.

Board stated no change to FOF #3.

Netteberg changed FOF #4.

Board stated no change to FOF #5.

They discussed FOF #6.

Netteberg stated if he built another structure between the garage and house to connect, it would not require variance. Dyck stated that all he would need to do is have a covered breezeway. They discussed how it would satisfy the requirements. Dyck asked how far away the building was away from the property line and the applicant answered 10'. Applicant discussed why a breezeway would not be an option for his house. They further discussed this between staff, board, and applicant. They also discussed the problem they were having addressing this as an after the fact variance. Mussman mentioned if they did not feel the breezeway was reasonable or viable, the board could discuss that. Mussman also suggested they could ask the applicant why the structure could not be 20' wide.

Noble asked why the garage had to be 24' wide. Applicant explained why it needed to be the size it was.

Klempel asked how old the house was. Applicant stated it was built in '77.

Staff talked about why it would be reasonable. Mussman offered some advice to help out. He said that variances were supposed to be difficult to approve but this process had to be backed up by documentation. Mussman said if there was one thing that would prove to be a hardship would be the fact that putting the dwelling in the back would be putting it on unstable and steep ground; proving that the topography created hardship. He also suggested that it would not be viable to attach the breezeway because it would be less esthetically pleasing than a brand new shop. The hardship would not be economic because of the existing development of the house as well as the topography of unstable soils.

Klempel asked about sloughing and Netteberg stated that the sloughing was

occurring on the south end.

Noble changed FOF #7.

Staff provided change for FOF #8.

Noble and Netteberg changed FOF #9

Hash believed they were stretching the facts and did not know what the board would have done if he hadn't built it in the first place. He did not want to set the precedent. He wanted to protect integrity of variance criteria. He said variances were a privilege, not a right. The board was trying to help the applicant since it was an after-the-fact but he felt uneasy trying to force something.

**ROLL CALL TO
ADOPT F.O.F AS
AMENDED
(FZV-18-04)
7:01 pm**

Motion was passed on a (3-2) roll call vote. Hash and Klempel dissented.

**MOTION TO
APPROVE
(FZV-18-04)
7:02 pm**

Netteberg made a motion, seconded by Noble, to approve the application.

**BOARD
DISCUSSION
7:02 pm**

None

**ROLL CALL TO
APPROVE
(FZV-18-04)
7:02 pm**

Motion was passed on a (3-2) roll call vote. Hash and Klempel dissented.

**VIGIL STEEL
LLC
(FCU-18-11)
7:03 pm**

A request from Daniel & Nikole Vigil for a conditional use permit for a 'Home Occupation' for a metal fabrication shop on a lot located within the Bigfork Zoning District. The property is located at 9180 Highway 35 in Bigfork, MT and is zoned R-1 (Suburban Residential). The property contains approximately 1.6 acres.

**STAFF REPORTS
7:03 pm**

Rachel Ezell reviewed the Staff Report FCU-18-11 for the board.

**BOARD
QUESTIONS**
7:05 pm

Klempel asked if the business hours were Monday thru Friday. Ezell said she did not identify days of the week in her report due to the occasional after hours needed and she conditioned it as such. Their general office hours were 8-5, Monday-Friday.

**APPLICANT
PRESENTATION**
7:08 pm

Daniel and Nikole Vigol, 9180 Mt Hwy 35, said this was what they had done for their primary occupation but had recently moved to a new home and wanted to transfer their business. This was their primary place of residence.

**PUBLIC
COMMENT**
7:09 pm

None

**STAFF
REBUTTAL**
7:09 pm

Ezell brought up that they had received a public comment after packets had gone out to the board. She submitted it to the board for review and summarized the concern mentioned in the letter.

**BOARD
DISCUSSION**
7:10 pm

Klempel asked the applicant if there was a lot of vegetation around the property. Vigil said there was vegetation and described it. Ezell pointed out a picture in the staff report. Dyck pointed out that it appeared there was gravel around the shop.

Noble asked the staff about the health department comments that were not included in the staff report. Ezell pointed out that the department said it would not produce industrial hazardous waste and that everything could be accommodated. She also mentioned that it would not require a COSA rewrite.

**MOTION TO
ADOPT F.O.F
(FCU-18-11)**
7:13 pm

Dyck made a motion, seconded by Netteberg, to accept Staff Report FCU-18-11 as Findings-of-Fact.

**BOARD
DISCUSSION**
7:13 pm

None

**ROLL CALL TO
ADOPT F.O.F
(FCU-18-11)**
7:13 pm

The motion passed unanimously on a roll call vote.

MOTION TO APPROVE (FCU-18-11) <i>7:14 pm</i>	Dyck made a motion, seconded by Klempel, to approve the FCU-18-11 application.
BOARD DISCUSSION <i>7:14 pm</i>	None
ROLL CALL TO APPROVE (FCU-18-11) <i>7:14 pm</i>	The motion passed unanimously on a roll call vote.
JOHN AND LINDA ERFLE (FCU-18-12) <i>7:14 pm</i>	A request from Sands Surveying, Inc. and Mark Gillette, on behalf of John & Linda Erfle, for a conditional use permit to build two (2) tri-plexes on property located within the Bigfork Zoning District. The property is located at 155 Jewel Basin Court and is zoned B-3 (Community Business). The property contains approximately 0.5 acres.
STAFF REPORTS <i>7:14 pm</i>	Mack reviewed the Staff Report FCU-18-12 for the board
BOARD QUESTIONS <i>7:16 pm</i>	None
APPLICANT PRESENTATION <i>7:16 pm</i>	Eric Mulcahy with Sands Surveying, 2 Village Loop, represented the applicant. He felt staff did a great job with the report and they concurred with the findings and conditions along with the COSA rewrite requirement.
BOARD QUESTIONS <i>7:17 pm</i>	None
PUBLIC COMMENT <i>7:17 pm</i>	None

**BOARD
DISCUSSION**
7:17 pm

None

**MOTION TO
ADOPT F.O.F
(FCU-18-12)**
7:18 pm

Noble made a motion, seconded by Netteberg, to accept Staff Report FCU-18-12 as Findings-of-Fact.

**BOARD
DISCUSSION**
7:18 pm

None

**ROLL CALL TO
ADOPT F.O.F
(FCU-18-12)**
7:18 pm

Motion was passed unanimously on a roll call vote.

**MOTION TO
APPROVE
(FCU-18-12)**
7:18 pm

Noble made a motion, seconded by Klempel, to approve the FCU-18-12 application.

**BOARD
DISCUSSION**
7:19 pm

None

**ROLL CALL TO
APPROVE
(FCU-18-12)**
7:19 pm

Motion was passed unanimously on a roll call vote.

**F.H. STOLTZE
LAND & LUMBER
COMPANY
(FCU-18-13)**
7:19 pm

A request from Glacier Nordic Club on behalf of FH Stoltze Land & Lumber Company for a conditional use permit to allow for a 'Low Impact Recreational Facility' on property located within the Haskill Basin Estates Zoning District. The property is located on Haskill Basin Road near Whitefish, MT and is zoned AG-20 (Agricultural). The applicant is requesting the permit to allow for the use of the property as a parking lot on approximately 120 acres for nearby cross country skiing opportunities.

STAFF REPORTS
7:19 pm

Kari Nielsen reviewed the Staff Report FCU-18-13 for the board

**BOARD
QUESTIONS**
7:23 pm

None

**APPLICANT
PRESENTATION**
7:23 pm

Cameron Blake, 675 Leksand Trl, was the Executive Director of the Glacier Nordic Club. She clarified that she had spoken with Stoltz this morning and wanted to point out that, in terms of the pit toilet and per the conservation easement requirements, no structures could be built therefore they wanted to proceed with no sewage. They realized that if there was a problem, they would need to work with Stoltz to come up with a solution which would include going before the City of Whitefish and the group that oversees the conservation for approval.

She said they were excited because there were a lot of great trails up there and discussed the benefits of having the access to parking.

Paul McKenzie with FH Stoltze Land & Lumber, 600 Halfmoon Rd., spoke in favor of the project. He clarified that the Nordic Club operated under a land use license under them, which was an annual renewal. They were willing to see how things worked out.

**BOARD
QUESTIONS**
7:26 pm

None.

**PUBLIC
COMMENT**
7:26 pm

Don Sharfe, 383 Addison Sq. Rd., spoke in favor of the application. He felt like an easier access with less traffic and driving would be beneficial to access the trails.

**STAFF
REBUTTAL**
7:27 pm

Nielsen clarified that there was no condition requiring a pit toilet but there was a condition that the applicants comply with the Flathead County Environmental Health regulations.

**BOARD
DISCUSSION
7:27 pm**

Hash asked what issue they might have if Stoltz did not renew their land use license. Nielsen clarified that they would not have a conditional use permit at that time because they would not have legal access.

Noble asked Nielsen to clarify how many spots they would have and she reported that they currently had 4 and they would be adding 7; making 11 total. Nielsen also clarified that it was a low impact reactional facility and they would have to keep it under the 75 trips a day requirements. She said it would have to stay low use to comply with the permit.

Hash asked staff about an additional condition that could be added to help with trips per day and traffic. Nielsen said that she would add a condition number #10 to state:

10. The proposed use shall not generate more than 75 vehicle trips per day as required by FCZR 7.17.040(2).

**MOTION TO
ADOPT F.O.F
(FCU-18-13)
7:30 pm**

Netteberg made a motion, seconded by Noble, to accept Staff Report FCU-18-13 as Findings-of-Fact.

**BOARD
DISCUSSION
7:30 pm**

None

**ROLL CALL TO
ADOPT F.O.F
(FCU-18-13)
7:30 pm**

Motion was passed unanimously on a roll call vote.

**MOTION TO
APPROVE
(FCU-18-13)
7:31 pm**

Noble made a motion, seconded by Noble to approve the FCU-18-13 Application with the 10 conditions.

**BOARD
DISCUSSION
7:31 pm**

None

**ROLL CALL TO
APPROVE
(FCU-18-13)
7:31 pm**

Motion was passed unanimously on a roll call vote.

**OLD BUSINESS
7:31 pm**

None

**NEW BUSINESS
7:31 pm**

Mussman announced the Commissioner's decisions on board appointments and re-appointments for the 2019 year.

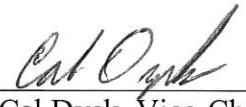
The board discussed protocol for board members visiting sites. Mussman discouraged them from speaking with anybody while on the property.

Noble asked about having a county attorney present at the meetings. Mussman said that it was something that they could request. Nielsen said the county attorneys encouraged the boards to contact them if they had any legal questions while reviewing the files.

The board also discussed with the director county zoning and city jurisdiction.

**MEETING
ADJOURNED
7:42 pm**

Adjourned



Cal Dyck, Vice-Chair



Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED 4/2/2018 ~~2018~~ 2019